

REMARKS / ARGUMENTS

The present application includes pending claims 1-36.

Claims 19-36 are rejected under 35 USC 101 for allegedly being directed to non-statutory subject matter.

Claims 1-7, 9-16, 18-25, 27-34, 36 are rejected under 35 USC 103(a) as allegedly being unpatentable over Ayyagari et al. (US Pub. No. 2001/0024434, hereinafter Ayyagari), and further in view of Singhal et al. (US Pub. No. 2002/0165990, hereinafter Singhal).

Claims 8, 17, 26, 35 are rejected under 35 USC 103(a) as allegedly being unpatentable over Ayyagari and Singhal as applied to claims 1, 10, 19 and 28, and further in view of Matta et al. (US Pub. No. 2003/0142651, hereinafter Matta).

The Applicant traverses the rejections and respectfully submits that the claims define patentable subject matter.

I. RESPONSE TO EXAMINER'S ARGUMENTS

A. Rejection of claims 19-36 Under 35 U.S.C. § 101

The Applicant (in the 1/29/09 response) argued that Applicant's **receiver 406**, as shown in Fig. 4 of the specification, **is at least partially a physical layer device**, that performs a useful function of receiving "a first messaging protocol message" for QoS

determination of the first switch and first access point. The Examiner (page 6 of the Final Office Action) alleges that "the claimed limitation does not necessarily reflect the device in Fig. 4 contains a hardware component."

The Applicant respectfully disagrees, and points out that **software** (i.e., software codes) **alone** (**without the functions of a physical circuitry**) is **not capable of self-performing the "receiving" function of message signals from another physical device, such as "a first access point and/or a first switch".** Therefore, the claimed "receiver" and "controller" **cannot be completely an intangible "software" function.**

The Applicant respectfully submits that claims 19-36 are directed to statutory subject matter, and requests that the rejection to claims 19-36 under 35 USC 101 be withdrawn.

B. Rejection Under 35 U.S.C. § 103

In the 9/30/08 Office Action, the Examiner relies for support on Ayyagari's Fig. 2, and equates Ayyagari's Access Point 200 and router 235 to Applicant's "Access Point" and "network device", respectively. The Applicant (in the 1/29/09 response) argued that Ayyagari (in Fig. 2) discloses that the router 235 is part of the subnet bandwidth manager (SBM) 240. In addition, Ayyagari also discloses combining the SBM 240 at the AP 200 to track allocations of wireless bandwidth. In effect, Ayyagari discloses that the router 235 is part of the SBM 240, which is an integral functional part of the AP 200.

Therefore, the QoS request message sent from the AP 200 to the router 235 is “an internal request within the AP” itself. Therefore, Ayyagari does not disclose **“receiving at a network device, from one or both of a first access point ..., a first messaging protocol message containing QoS information,”** as recited in Applicant’s claim 1.

At page 6 of the Final Office Action, the Examiner concedes that Ayyagari’s SBM 240 can be an integral function of the AP 200. However, the Examiner alleges that the router 235 is a separate device from the AP 200, and Ayyagari does not disclose that the SBM 240 as a functional part of the router. The Examiner also argues that the Applicant needs to provide evidence that the AP 200, the SBM 240 and the router 235 are the same device (i.e., physically fit into a “single device”). In addition, the Examiner alleges that Applicant’s claim 1 does not recite that the network device is separate from the first AP.

The Applicant respectfully disagrees that the router 235 is a separate device from the AP 200. Ayyagari clearly discloses that **the router 235 is a part of the SBM 240** (see Ayyagari’s Fig. 2), and the function of the SBM 240 is combined with the function of the AP 200 for tracking allocations of wireless bandwidth (see the abstract and ¶0057). Therefore, Ayyagari in effect, discloses that **the router 235 (the alleged “network device”), together with the SBM 240, form an integral functional part of the AP 200.** In other words, Ayyagari discloses that the AP 200 as a whole, includes the router 235 (the alleged “network device”) and the SBM 240.

Furthermore, Ayyagari does not specifically disclose the AP 200 as "a device", as alleged by the Examiner. Instead, Ayyagari discloses that the "AP 200" is an aggregate **computing environment** (see Ayyagari at ¶0047 and Fig. 2) and includes a "node" 230 (see Ayyagari at ¶0050), which includes an antenna (tower), an SBM authentication software 205 with a Radius server 255, and a SBM 240 (with a plurality of servers, a database storage 265 and a router 235). Therefore, it would be incorrect for the Examiner to request that the antenna (tower) or the SBM authentication software 205 with a Radius server 255, be shown as physically "within" an alleged "AP device", in order to be considered as the AP 200 itself. Based on this rationale, the Examiner's argument that the Applicant needs to show that Ayyagari's router 235 (the alleged "network device"), the SBM 240 and the AP 200, is the "same device" physically, is therefore moot in light of contradicting to the disclosure of Ayyagari.

In addition, Applicant's claim 1 clearly recites "**receiving at a network device, from one or both of a first access point ...**" It is inherent that without specific recitation in the claim, the network device and the first AP, are separate and not referring to itself (i.e., the first AP or the network device). Applicant's claim 1 is, therefore, properly recited without further need of clarification, that the network device be separated from the first AP and/or switch, as incorrectly suggested by the Examiner.

Furthermore, with regard to the rejection of claim 1, the Applicant in the 1/29/09 response pointed out that Singhal in the entire reference does not even disclose or

suggest using any messaging protocol message at all. In this regard, the Applicant maintains that there is no support to the Examiner's allegation that combining Singhal with Ayyagari would show obviousness to modify Ayyagari to use two different messaging protocol messages in Singhal.

At page 7 of the Final Office Action, the Examiner merely alleges without support and proof, that Singhal's wired and wireless protocols use different messaging protocols. The Examiner is referred to MPEP at § 2142, which states the following:

The examiner bears the initial burden of factually supporting any prima facie conclusion of obviousness. If the examiner does not produce a prima facie case, the applicant is under no obligation to submit evidence of nonobviousness.

See MPEP at § 2142. Since the Examiner in the Final Office Action fails to provide factual support to the allegation that Singhal's wired and wireless protocols use different messaging protocols, the Applicant maintains that Singhal is not a combinable reference with Ayyagari's to establish a prima facie case of obviousness to reject Applicant's claim 1. Claim 1 is submitted to be allowable.

II. Rejection Under 35 U.S.C. § 101

Claims 19-36 are rejected under 35 USC 101 for being allegedly directed to non-statutory subject matter, such as an abstract idea not tied to a technological art, environment or machine which would result in producing a useful and tangible result to form the basis of statutory subject matter under 35 USC 101. The Examiner is referred

to the Applicant's above arguments and respectfully submits that claims 19-36 are directed to statutory subject matter. The Applicant respectfully requests that the rejection to claims 19-36 under 35 USC 101 be withdrawn.

III. Rejection Under 35 U.S.C. § 103

In order for a *prima facie* case of obviousness to be established, the Manual of Patent Examining Procedure ("MPEP") states the following:

The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1396 (2007) noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. The Federal Circuit has stated that "rejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness."

See the MPEP at § 2142, citing *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006), and *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d at 1396 (quoting Federal Circuit statement with approval). Further, MPEP § 2143.01 states that "the mere fact that references can be combined or modified does not render the resultant combination obvious unless the results would have been predictable to one of ordinary skill in the art" (citing *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1396 (2007)). Additionally, if a *prima facie* case of obviousness is not established, the Applicant is under no obligation to submit evidence of nonobviousness:

The examiner bears the initial burden of factually supporting any prima facie conclusion of obviousness. If the examiner does not produce a prima facie case, the applicant is under no obligation to submit evidence of nonobviousness.

See MPEP at § 2142.

A. The Proposed Combination of Ayyagari and Singhal Does Not Render Claims 1-7, 9-16, 18-25, 27-34 and 36 Unpatentable

The Applicant turns to the rejection of claims 1-7, 9-16, 18-25, 27-34 and 36 by the Examiner under 35 U.S.C. § 103(a) as being unpatentable over Ayyagari in view of Singhal.

A(1). Rejection of Independent Claims 1, 10, 19 and 28

With regard to the rejection of independent claim 1 under 35 U.S.C. § 103(a), the Applicant submits that the combination of Ayyagari and Singhal does not disclose or suggest at least the limitation of "receiving at a network device, from one or both of a first access point and/or a first switch, a first messaging protocol message containing quality of service (QoS) information," as recited in the Applicant's claim 1.

The Examiner states the following in the Final Office Action:

As per claims 1,10,19,28, Ayyagari discloses a method for providing network management in a local area network, the method comprising:

"receiving at a network device, from one or both of a first access point and/or a first switch, a first messaging protocol message containing quality of service (QoS) information (see paragraph 48, showing how a router i. e. network device, receives QoS request from access pointer [200],"

See the Final Office Action at page 3. The Examiner relies for support on the following citation by Ayyagari:

"The laptop computer 215, which is one of the wireless devices 210, 215 or 220, requests access to a network to communicate, with a specified QoS specifying the required bandwidth, time constraints and the like, with a receiving node 230. In response, **the access point 200 sends a message requesting QoS to a router 235. The router 235 manages packet flow through a subnet 240 to allow the requested communication access to the receiving node 230.**"

See Ayyagari at ¶0048, page 3. The Examiner equates Ayyagari's Access Point 200 and router 235 to Applicant's "Access Point" and "network device", respectively. The Examiner is referred to the above arguments in subsection I-B, in addition to the arguments in the 1/29/09 response. Namely, Ayyagari discloses that the router 235 is part of the SBM 240, which is an integral functional part of the AP 200. Therefore the AP 200 as a whole, includes the router 235 (the alleged "network device") and the SBM 240.

Furthermore, Ayyagari does not specifically disclose that the AP 200 as "a device" as alleged by the Examiner. Instead, Ayyagari clearly discloses that the "AP 200" is an aggregate **computing environment** (see Ayyagari at ¶0047 and Fig. 2) and includes a "node" 230 (see Ayyagari at ¶0050), including an antenna (tower), an SBM authentication software 205 with a Radius server 255, and a SBM 240 (with a plurality of servers, a database storage 265 and a router 235). Therefore, the Examiner's argument that the Applicant needs to show that Ayyagari's router 235 (the alleged

"network device"), the SBM 240 and the AP 200, all constitute the "same device", is therefore moot since it contradicts the disclosure of Ayyagari.

In addition, Applicant's claim 1 clearly recites "**receiving at a network device, from one or both of a first access point ...**" It is inherent that without specific recitation in the claim, the network device and the first AP, are separate. Applicant's claim 1 is, therefore, properly recited without further need of clarification that the network device be separated from the first AP and/or switch, as suggested by the Examiner. Therefore, the Applicant maintains that Ayyagari does not disclose or suggest "**receiving at a network device, from one or both of a first access point ..., a first messaging protocol message containing QoS information**," as recited in Applicant's claim 1. Singhal does not overcome Ayyagari above deficiencies.

Furthermore, the Applicant maintains the arguments in the 1/29/09 response, that Singhal does not overcome Ayyagari's deficiencies in the remaining claim limitations. Namely, Singhal does not disclose or suggest using any messaging protocol message, let alone use two different messaging protocol messages in Singhal. At page 7 of the 5/11/09 Final Office Action, the Examiner merely alleges without support and proof, that Singhal's wired and wireless protocols use different messaging protocols. The Examiner is referred to MPEP at § 2142, that failure to provide factual support to the allegation that Singhal's wired and wireless protocols use different messaging protocols

renders Singhal and Ayyagari unable to establish a prima facie case of obviousness to reject Applicant's claim 1.

Accordingly, the Applicant maintains that the combination of Ayyagari and Singhal does not establish a prima facie case of obviousness under 35 U.S.C. § 103(a) to reject claim 1, and therefore claim 1 is allowable. The Applicant respectfully requests that the rejection of independent claim 1 under 35 U.S.C. § 103(a) be withdrawn.

Claims 10, 19 and 28 are similar in many respects to independent claim 1, and therefore, claims 10, 19 and 28 are also allowable for the same rationale as stated above with regard to claim 1. The Applicant respectfully requests that the rejection of claims 10, 19 and 28 be also withdrawn.

Furthermore, The Applicant reserves the right to argue additional reasons beyond those set forth herein to support the allowability of the independent claims 1, 10, 19 and 28 should such a need arise.

A(2). Dependent Claims 2-7, 9, 11-16, 18, 20-25, 27, 29-34 and 36

Based on at least the foregoing, the Applicant believes the rejection of the independent claims 1, 10, 19 and 28 under 35 U.S.C. § 103(a) as being unpatentable over Ayyagari in view of Singhal has been overcome and should be allowable. Claims 2-7, 9, 11-16, 18, 20-25, 27, 29-34 and 36 depend directly or indirectly from the independent claims 1, 10, 19 and 28, and are, consequently, also respectfully submitted to be allowable and requests that the rejection under 35 U.S.C. § 103(a) be withdrawn.

The Applicant reserves the right to argue additional reasons beyond those set forth herein to support the allowability of dependent claims 2-7, 9, 11-16, 18, 20-25, 27, 29-34 and 36 should such a need arise.

B. The Proposed Combination of Ayyagari, Singhal and Matta Does Not Render Claims 8, 17, 26 and 35 Unpatentable

Based on at least the foregoing, the Applicant believes the rejection of the independent claims 1, 10, 19 and 28 under 35 U.S.C. § 103(a) as being unpatentable over Ayyagari in view of Singhal has been overcome and should be allowable. Matta does not overcome the deficiencies of Ayyagari and Singhal. Claims 8, 17, 26 and 35 depend directly or indirectly from the independent claims 1, 10, 19 and 28, and are, consequently, also respectfully submitted to be allowable and requests that the rejection under 35 U.S.C. § 103(a) be withdrawn.

The Applicant reserves the right to argue additional reasons beyond those set forth herein to support the allowability of dependent claims 8, 17, 26 and 35 should such a need arise.

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CONCLUSION

Based on at least the foregoing, the Applicant believes that all pending claims 1-36 are in condition for allowance. If the Examiner disagrees, the Applicant respectfully requests a telephone interview, and requests that the Examiner telephone the undersigned Patent Agent at (312) 775-8093.

The Commissioner is hereby authorized to charge any additional fees or credit any overpayment to the deposit account of McAndrews, Held & Malloy, Ltd., Account No. 13-0017.

A Notice of Allowability is courteously solicited.

Respectfully submitted,

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